



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 10-02584
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: Barry M. Sax, Esquire

January 12, 2011

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is granted.

On July 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant, through his attorney, answered the SOR in writing on July 20, 2010, and requested a hearing before an administrative judge. The case was assigned to me on September 22, 2010. DOHA issued a Notice of Hearing on September 30, 2010. I convened the hearing as scheduled on November 10, 2010. The Government offered Exhibits (GE) 1 and 2. Applicant did not object and they were admitted. The Government requested administrative notice be taken of certain facts relating to Taiwan

and Philippines as contained in Hearing Exhibits (HE) I and II. Applicant had no objection and I took administrative notice of the documents. Applicant and one witness testified. Applicant offered Exhibits (AE) A through M, which were admitted without objections, and a trial brief. DOHA received the hearing transcript (Tr.) on November 24, 2010.

### **Findings of Fact**

DOHA alleged under Guideline B, Foreign Influence, that Applicant's father and mother are dual citizens of the United States and Taiwan, residing in the Philippines (SOR ¶¶ 1.a. and 1.b.); that Applicant's uncle is a citizen and resident of Taiwan and works within the Taiwanese government (SOR ¶ 1.c.); that Applicant's grandmother is a dual citizen of the United States and Taiwan and resides in Taiwan (SOR ¶ 1.d.); that Applicant's father has contact with individuals employed within the Filipino and Taiwanese governments (SOR ¶ 1.e.); and that he travels to the Philippines approximately once yearly to visit his relatives (SOR ¶ 1.f.). Applicant admitted the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor. He has been married for two years to an American citizen. He was born in the United States to parents who immigrated to the United States from Taiwan in the late 1970s to further their education. Appellant's parents met at an American university and married in the U.S. They were naturalized as U.S. citizens in the 1980s, but retained dual citizenship with Taiwan. (GE 1; GE 2; AE L; Tr. 61-65, 115-117, 120-121.)

Applicant was raised in the U.S. and attended public schools. During his testimony, he told of his pride in being American. He noted that during middle school, the American flag was not being flown every day at his school. He volunteered every school day, for two years, to go to school early and hoist the flag. He also stayed after school to fold the flag properly. (AE L; Tr. 95-97.)

Applicant grew up very close to his American cousins, aunts, and uncles, who lived down the street from him. He would spend whole summers playing with his mostly older cousins. He continues to maintain a close relationship with them. Several of his extended family members live in the same state of Applicant and he socializes with them frequently. Applicant is also close to his sister, who is an American-born citizen and is currently attending medical school in the U.S. His wife is a native-born American citizen. Applicant is close to his in-laws, who all reside in the U.S. and are U.S. citizens. (GE 1; AE A; AE K; Tr. 92-93, 102, 121, 123.)

In the mid-1990s, Applicant's father's job threatened to be outsourced. Applicant's father decided to open up a factory in the Philippines to sell back the same item he produced in the U.S. to his former employer and other clients, mostly in the U.S. market. By 1996, Applicant's father was living in the Philippines the majority of the time, although Applicant, his sister, and Applicant's mother continued to reside in the United

States. His mother retired from her job in the U.S. in approximately 2005, when Applicant was 23-years old, and joined her husband in the Philippines. The factory is located in a suburb of the capital city of Manila. Applicant testified that this region is the safest part of the Philippines and that the majority of terrorist acts in the Philippines occur over 1,000 miles away. (GE 2; AE L; Tr. 62-67, 85-86, 117, 122.)

As a local businessman, Applicant's father is sometimes invited to business and charity functions where the mayor of his suburb is present. He has attended golf outings and other charity functions where local Filipino politicians are present. In February of 2009, Applicant's father was invited and took part in a business trip to Taiwan to attend an economic forum to promote increased trade between Philippines and Taiwan. This was the only such trip Applicant's father has taken. (GE 1; AE L; Tr. 68-69.)

Applicant traveled to the Philippines to visit his parents in December 2002 through January 2003, March 2007, March 2008, and March 2009. He has no future trips to the Philippines planned. His parents visit him in the U.S. approximately two-to-three times per year and stay at Applicant's aunt's house, when they are in the U.S. Applicant mainly communicates with his parents using Skype. They chat on a weekly basis. (GE 1; GE 2; Tr. 85-86, 118, 123.)

Applicant's father is 60-years old and his mother is 55-years old. They plan to return to the U.S. after they retire in the next ten years. They have earned full Social Security and Medicare benefits here. Until then, they seek medical treatment in Taiwan, as the Taiwanese medical system is considered by Applicant's parents to be more advanced than that in the Philippines. They maintain Taiwanese passports in order to receive Taiwanese medical care and to collect a small inheritance in Taiwan. (GE 1; Tr. 70, 90-91, 111-112.)

Applicant is "explicitly not included in any sort of inheritance" and does not stand to inherit anything in the Philippines or Taiwan. He has no financial investments, bank accounts, or other interests in Philippines or Taiwan. (GE 1; GE 2; Tr. 95-97.)

Applicant has a maternal grandmother who resides in Taiwan. Applicant's grandmother is in her 80s. She is a dual citizen of the U.S. and Taiwan. She became a U.S. citizen in the 2000s. In 2006, she moved to Taiwan, when Applicant's mother moved to the Philippines, to be geographically closer to Applicant's mother. She has always been a housewife. Applicant's contacts with his grandmother are limited to conversations relating to health due to Applicant's limited knowledge of the Taiwanese dialect of Chinese. He only speaks to his grandmother on an infrequent basis. They only communicate when his mom is in Taiwan visiting her. (GE 1; GE 2; AE L; Tr. 73-75, 99, 118.)

Applicant also has a maternal uncle who is a citizen and resident of Taiwan. Applicant was unaware that his mother had a younger brother until 2006. In his youth, Applicant's uncle worked for a civilian or military Taiwanese government agency. In 1983, Applicant's uncle had been sent to China on a mission to conduct espionage on

behalf of the Taiwanese government. He had allegedly been trained by Americans. Applicant's uncle was immediately caught and sentenced to prison in China. The Taiwanese government told Applicant's mother's family that the uncle was dead. Applicant's mother never told Applicant about this uncle. However, in December 2006, the Chinese government released the uncle from prison, after approximately 25 years of incarceration. (GE 1; GE 2; AE L; Tr. 70-73.)

Applicant has met his Taiwanese uncle twice. The first meeting occurred when Applicant was visiting his parents for a week in the Philippines in March 2007. Applicant's uncle was visiting his parents at the same time as Applicant's trip. During this trip, Applicant was a social guest of the Taiwanese Representative at the Taipei Economic and Cultural Office in the Philippines for a dinner, which the Representative hosted in order to meet Applicant's uncle. The second meeting occurred in March of 2008, when Applicant was in Taiwan for a day or two. Applicant reports that he cannot communicate with his uncle because his uncle speaks only Mandarin Chinese, and Applicant knows no Mandarin. Applicant does not communicate with his uncle over the phone nor electronically. Applicant has not had any contact with his uncle since March 2008 and he is "scrupulously avoiding any further contact." Applicant's mother only contacts his uncle a few times a year and she doesn't normally see her brother when she visits Taiwan. Applicant reports that he has no bonds or affection toward this uncle. Since their last contact, Applicant's uncle has taken a job in the Taiwanese government as an aide to a legislator. (GE 1; GE 2; AE L; Tr. 69-73, 88, 122.)

Applicant takes his responsibility to protect classified and proprietary information very seriously. He states:

I chose to work in the defense establishment because I honestly believe that the United States has underwritten global security and world peace for the better part of several decades now. We do so not only because of our ideals, but also because of our citizens and the technological need that our defense provides. And, so I chose to work at [defense contractor] . . . dedicated to improving the national defense through research and analysis instead of going to commercial industry because I really do believe that I'm part of a larger force of defense establishment, which is actually helping the world. To actually betray any of that, would be against not only to my [*sic*] personal interest for my family and financial ties here and my honor and integrity, but also my intellectual desire to make the world a better place than when I came here. (Tr. 76-78.)

Applicant indicated that he would report any attempts to get him to act improperly directly to his Facility Security Officer. He also has spent time reading materials such as the Adjudicative Desk Reference, the National Industrial Security Program Operations Manual, the local FBI's counter-intelligence news letters, and the Military Critical Technologies List so that he can be aware of the methods that foreign entities use to collect information and guard against covert collection attempts. (Tr. 76-78, 103, 106-108.)

Applicant is financially invested solely in the U.S. He reports liquid assets of approximately \$50,000 and retirement savings of \$80,000. He has approximately \$160,000 of equity in his home. His wife is employed by an American based technology company and together, they make salaries of over \$190,000 per year. They maintain good credit. (AE C; AE F; AE G; AE H; AE I; AE J; AE L; Tr. 89-90.)

Applicant is well respected by his colleagues, program manager, Facility Security Officer, and American family members. His program manager calls him “the finest young engineer I have ever worked with,” and his Facility Security Office indicated “he proves himself to be an excellent steward of all classified material.” His performance reviews for 2010 indicate Applicant does outstanding work. Applicant’s professional achievements include a 2006 National Defense Science and Engineering Fellowship. Applicant is currently earning a master’s degree from a prestigious American university. (AE A; AE B; AE D; Tr. 81, 117.)

## **Taiwan<sup>1</sup>**

In 1949, Taiwan was populated by approximately two million refugees fleeing a civil war in China. That same year, Communists in mainland China established the People’s Republic of China (PRC), and a separate, independent government was established in Taiwan. The PRC does not recognize Taiwan, and insists there is only “one China.” On January 1, 1979, the United States formally recognized the PRC as the sole legal government of China.

Taiwan is a multi-part democracy, which has significant economic ties with the PRC, despite not having any official talks with the PRC from 1998 through June 2008. Taiwan maintains a military with the primary mission of the defense of Taiwan against the PRC, which is seen as the predominant threat to Taiwan.

Taiwan was identified as an active collector of U.S. economic intelligence in the National Counterintelligence Center’s 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage. Additionally, there have been various court cases involving the illegal export, or attempted illegal export of U.S. restricted technology to Taiwan, including a criminal conviction of the Principal Deputy Assistant Secretary of State for East Asian and Pacific Affairs for illegally removing classified materials.

## **Philippines<sup>2</sup>**

The Philippines is a representative democracy and ally of the United States. It has suffered economically, since World War II, and has been impacted by the recent global economic downturn. In addition to the economic challenges facing the Philippines, the government faces threats from terrorist groups acting within its borders. The State Department has posted a warning to U.S. citizens traveling to the

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<sup>1</sup> All of the information about Taiwan is contained in Hearing Exhibit I.

<sup>2</sup> All of the information about the Philippines is contained in Hearing Exhibit II.

Philippines to be aware of the threats of bombings, assassinations, and kidnappings posed by the terrorist groups.

Human rights issues also present a concern in the Philippines. The State Department Country Reports on Human Rights Practices, dated February 2009, determined that the arbitrary, unlawful, and extrajudicial political killings of people, including journalists, continued to be a problem. Further, arbitrary or warrantless arrests and detentions were common.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Applicant admits that he has foreign family members, to include his mother and father, who are dual citizens of the U.S. and Taiwan, living in the Philippines; his grandmother, who is a dual citizen of the U.S. and Taiwan and resides in Taiwan; and his uncle who is a Taiwanese citizen and works as an aide to a Taiwanese legislator. However, the mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. Even if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

Most nations with substantial military establishments seek classified and sensitive information from the United States because it has the largest military industrial complex

and most advanced military establishment in the world. Taiwanese military officials could seek or accept classified information from U.S. citizens with access to this material. In fact, the administrative notice documents highlight several recent cases involving Taiwan's attempts to collect proprietary information from U.S. sources. In addition, the presence of terrorist organizations operating within the Philippines and the human rights abuses committed there raises significant risks with respect to family in the Philippines. Applicant's access to classified information and his connection to his family in each of these countries could create a potential conflict of interest. I find AG ¶¶ 7(a) applies.

I have also analyzed all of the facts and considered all of the mitigating conditions under AG ¶ 8. The following are potentially applicable:

- (a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization and interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. Taiwan is known to target U.S. intelligence, and terrorist organizations are known to be operating openly in the Philippines. Further, the Philippines's human rights record is poor and there is a risk for U.S. citizens traveling there.

Applicant has a close, familial relationship with his dual-Taiwanese-and-U.S. citizen parents residing in the Philippines. The same cannot be said of his grandmother and uncle. Applicant speaks to his elderly grandmother rarely and has communication problems with her when they do talk. Applicant has not had any contact with his uncle since 2008 and has intentionally cut off all contact with him. There are no ties of affection that bind Applicant and his uncle. Applicant's foreign ties of affection lie with



his parents, whom he visits in the Philippines. Although the Philippines is an ally with the United States, the fact that terrorist groups operate openly in the Philippines is a cause of concern. Similarly, a risk is present because Applicant's parents possess dual citizenship with Taiwan, an active collector of U.S. economic intelligence, and they often visit Taiwan for health care services. I find the nature of the relationship that Applicant has with his parents is more than casual and infrequent. Therefore, I cannot find that it is unlikely that Applicant will be placed in a position of having to choose between the interests of his parents and the interests of the United States. Therefore, AG ¶¶ 8(a) and 8(c) apply with respect to Applicant's grandmother and uncle, but do not apply with respect to Applicant's parents.

Applicant's ties to the United States run deep. He was born in the U.S. He attended public school and college in the U.S., earning a bachelor's degree from a prestigious American university, and is in the process of earning a master's degree at the same U.S. university. His mother, father, and grandmother are all naturalized citizens, despite living abroad. Applicant's wife is a natural-born U.S. citizen. He is close to his U.S. born in-laws and his extended family, consisting of over 20 aunts, uncles, and cousins who are all U.S. citizens, residing in the U.S. Applicant's assets are in the United States. He does not stand to inherit anything in a foreign country. Applicant has the trust of his Facility Security Officer who opined Applicant was "an excellent steward of classified material." He has earned the accolades of his supervisors. He was also a 2006 National Defense Science and Engineering Fellow.

Applicant has close and substantial ties to his parents that have dual citizenship with the U.S. and Taiwan, and reside in the Philippines. To a lesser extent, he has familial ties to his grandmother who is a dual citizen of the U.S. and Taiwan and resides in Taiwan, although his contact with her is infrequent and strained due to a language barrier, as noted above. He has broken off all ties to his uncle, who is a citizen of Taiwan and has a civil servant job as an aide to a legislator in Taiwan.

I have had the opportunity observe Applicant, listen and consider his testimony, examine the evidence and resolve any questions. I find that, although Applicant has family ties in the Philippines and Taiwan, he has a deep and longstanding relationship with the United States. His life and that of his immediate family is entrenched in the United States. His patriotism shines through in his tale of raising the flag as a child and is highlighted by his commitment to security and his dedication to the principles which this country holds dear. There is no evidence that Applicant's parents living in the Philippines are political activists or that they have high profile jobs with that Government. While Applicant's father is a businessman and sometimes interacts with politicians such as his local mayor, these instances are rare and pose little risk. The one-time trip Applicant's father took to interest Taiwanese businesses in investing in the Philippines was mainly a business trip, not governmental in nature. Further, the dinner that Applicant and his father attended at the Taiwanese Representative's residence in the Philippines was to honor Applicant's uncle. Since Applicant has severed all ties with his uncle, there is little indication that such contact would reoccur. There is no evidence that Applicant's parents currently engage in activities that would bring attention to them.

There is no evidence that terrorists or any anti-U.S. elements are aware that Applicant has family living in the Philippines. His parents live outside of the area inhabited by terrorists. I find his connections to the United States are stronger than his connection the Philippines and Taiwan. His loyalty to the United States is steadfast and undivided and he can be expected to resolve any conflict of interest in favor of the U.S. interest. I find AG ¶ 8(b) applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant was born and has lived all of his life in the U.S. He attended public schools and has worked hard to reach where he is today. His dedication to the U.S. and the defense establishment led him to choose a career in public service, although he is highly accomplished. He is dedicated to improving the national defense and has taken necessary steps to educate himself on methods foreign entities use to collect information, should he ever be targeted. I have carefully considered all of the evidence and I am convinced Applicant's roots are firmly planted in the United States. I am also convinced that should there ever be a conflict of interest, Applicant would clearly resolve it in favor of this country due to his steadfast commitment to the United States.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Foreign Influence.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Jennifer I. Goldstein  
Administrative Judge